

FORM 17. Personal Restraint Petition for Person Confined by State or Local Government

[Rule 16.7]

Court of Appeals, Division II

No. [appellate court]

[Put name of appellate court that you want to hear your case.]

OF THE STATE OF WASHINGTON

[Put your name here],

Charles R. Gotcher

PERSONAL RESTRAINT PETITION

Petitioner.

FILED
COURT OF APPEALS
DIVISION II
2015 JAN 8 PM 1:25
STATE OF WASHINGTON
BY DEPUTY

If there is not enough room on this form, use the back of these pages or use other paper.
Fill out all of this form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, Charles R. Gotcher, 371646, King A41,
AHCC, PO Box 1899, Airway Heights, WA 99001-899.

(full name and address)

apply for relief from confinement. I am ☒ am not ___ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order:

(identify type of order)

1. The court in which I was sentenced is

Grays Harbor County Superior Court.

2. I was convicted of the crime(s) of

2 counts of Rape of a child in the third degree + 1 count child molestation in the third degree.

3. I was sentenced after trial ☒ after plea of guilty ___ on

March 16, 2014.

(date of sentence)

The judge who imposed sentence was

Judge Gordon L. Godfrey

(name of trial court judge)

4. My lawyer at trial court was

Paul A. Strophy, 1226 State Ave N.E.,
Olympia, WA 98506

(name and address if known; if none, write "none")

5. I did ☒ did not ☐ appeal from the decision of the trial court. (If the answer is that I did), I appealed to

It is in the process now.

(name of court or courts to which appeal was taken)

My lawyer on appeal was

Lisa E. Tabbat

(name and address if known; if none, write "none")

The decision of the appellate court was ☐ was not ☐ published. (If the answer is that it was published, and I have this information), the decision is published in

It has not been
heard yet.

(volume number, Washington Appellate Reports or Washington Reports, and page number)

6. Since my conviction I have ☐ have not ☒ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was

N/A

(name of court or courts in which relief was sought)

Relief was denied on

N/A

(date of decision or, if more than one, dates of all decisions)

7. (If I have answered in question 6 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 6 was

N/A

(name and address if known; if none, write "none")

8. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here:

N/A

B. GROUNDS FOR RELIEF

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc.). I claim that I have 1 (number) reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

First Ground
(First, Second, etc.)

1. I should be given a new trial or released from confinement because (Here state legal reasons why you think there was some error made in your case which gives you the right to a

new trial or release from confinement.):

The prosecutor withheld evidence that could have helped to prove my innocence. According to the Brady Rule and Omnibus Order she is supposed to (continued on back)

2. The following facts are important when considering my case (After each fact statement, put the name of the person or persons who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that, also.):

This evidence is a rape case involving the alleged victim that occurred during the times/dates (continued on back)

3. The following reported court decisions (include citations if possible) in cases similar to mine show the error I believe happened in my case (If none are known, state "None known").:

"None known"

4. The following statutes and constitutional provisions should be considered by the court (If none are known, state "None known").:

CrR 7.5(a), CrR 7.5(a)(2), CrR 7.5(a)(8), CrR 7.5(b), Brady Rule, Rule 3.8, Omnibus Order

5. This petition is the best way I know to get the relief I want, and no other way will work as well because I am already incarcerated for a crime I did not commit and I am entitled to use this newly

discovered evidence to help prove my innocence.

C. STATEMENT OF FINANCES

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do ☒ do not ☐ ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have a spendable balance of \$35.00 in my prison or institution account.

3. I do ☒ do not ☐ ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

4. I am ☐ am not ☒ employed. My salary or wages amount to \$_____ a month. My employer is _____

(name and address)

5. During the past 12 months I did ☒ did not ☐ get any money from a business, profession or other form of self-employment. (If I did, it was unemployment and the

(kind of self-employment)

total income I got was \$1,100.00 in 2013

1. disclose evidence in her possession favorable to the defendants issue of guilt or to disclose whether or not there is any physical or documentary evidence in plaintiffs possession and permit inspection. The prosecutor did not disclose the other case or evidence. Grays Harbor County case # 10-1-195-9. The prosecutor in my case was also the prosecutor in this case.
2. she has alleged the events took place in this/my case. Statements in that case made by the alleged victim and her mother call into question whether anything could have happened between her and I and conflict with statements they made in this case.
 - Grays Harbor County Superior Court Case # 10-1-195-9
 - Paul A. Strophy, Defense Attorney - letter is attached

Also the deputy prosecutor in my case, prosecuted the man (Jacobs Gaiser) in the other case brought about by Mrs. Eaton that involved Aisha Eaton. This case took place during the alleged time frame in my case. The deputy prosecutor (Kathrine Syvokoda) should have disclosed this other case to me and my attorney since she was involved in both cases. This is according to the Brady Rule and the Omnibus Order.

Continued on Back
Page

STATEMENT OF FINANCES

I, Charles Roy Gotcher, certify that I cannot afford to pay the \$250 filing fee normally required to file a personal restraint petition.

1. I request that the filing fee be waived and that I be allowed to file a personal restraint petition without prepayment of the filing fee.
2. My request in this matter is brought in good faith.
3. I am _____ am not X employed. My salary or wages amount to \$ _____ per month. My employer is (Name and address):

4. I do X do not _____ have any checking or savings accounts in any financial institutions. The total amount of funds I have in any such accounts of any type is \$ 10.00.
5. In the past 12 months, I did X did not _____ receive any interest, dividends, rental payments, or other money. The total amount of such money I received was \$ 7,106.00 The total amount of cash I have other than otherwise indicated above is \$ 0.
6. I own or have an interest in the following real estate, stocks, bonds, notes, and other property (list any property of a present value of more than \$50, its current value and the amount, if any, currently owed against said property):

<u>Item</u>	<u>Value</u>	<u>Amount Owed</u>
(for example: an automobile, make, model, and year; the present value, \$3,000.00; still owe \$500.00).		

<u>1993 Mazda Protege'</u>	<u>\$800.00</u>	<u>0</u>
<u>(Salvage Title)</u>		
_____	_____	_____
_____	_____	_____

7. I am _____ am not X married. My spouse is _____ is not _____ employed. His or her salary or wages amount to \$ _____ per month. He or she owns the following property not already described above:

8. These following persons depend on me for support (list name, relationship to you, and address for each person):

No One.

9. I owe the following bills (list name and address of creditors and any amount currently owed):

Sprint - \$300.00

[IF APPLICABLE - Petitioner incarcerated in a correctional facility-COMplete #10]

10. I have a spendable balance of \$35.00 in my prison or institutional account as of the date of this financial statement.

I declare under the penalty of perjury (pursuant to the laws of the State of Washington) that I have read this financial statement, know its contents, and I believe all of the information and statements contained therein to be true.

Dated this 16 day of 6, 2014.

Charles Gotten
PETITIONER

6. During the past 12 months, I

did (did not) get any rent payments. If so, the total amount I got was \$ _____.
— X get any interest. If so, the total amount I got was \$ _____.
X X get any dividends. If so, the total amount I got was \$ _____.
X — get any other money. If so, the amount of money I got was
\$ 7,106.00.

7. — X have any cash except as said in answer 2. If so, the total amount of
cash I have is \$ 0.
X — have any savings accounts or checking accounts. If so, the amount in
all accounts is \$ 10,00.
— X own stocks, bonds, or notes. If so, their total value is \$ _____.

8. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
1993 Mazda Protege! (Salvage title)	\$800.00

9. I am — am not X married. If I am married, my wife or husband's name and address is _____

10. All of the persons who need me to support them are listed here.

Name and Address	Relationship	Age
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N/A

11. All the bills I owe are listed here.

Name of creditor	Address	Amount
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you owe money to

Sprint

\$300.00

D. REQUEST FOR RELIEF

I want this court to:

X vacate my conviction and give me a new trial

— vacate my conviction and dismiss the criminal charges against me without a new trial

— other (specify) _____

E. OATH OF PETITIONER

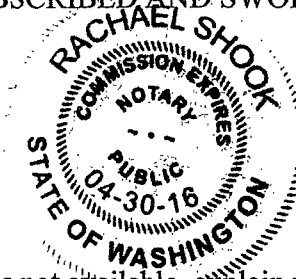
THE STATE OF WASHINGTON)
) ss.

COUNTY OF Spokane

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Charles Gotter
(Sign Here)

2014 SUBSCRIBED AND SWORN to before me this 16th day of June



Rachael Shook
Notary Public in and for the State of Washington
Residing at Spokane

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary: _____

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

DATED This _____ day of _____, 20____.

(Sign Here)

See Addendum

ADDENDUM

I, Charles Roy Gotcher, case # 13-1-199-6 am currently incarcerated at Airway Heights Correction Center in Airway Heights, Washington on two counts of Rape of a Child in the Third Degree and one count of Child Molestation in the Third Degree. I was found guilty by a jury on January 10, 2014 and sentenced on March 7, 2014 by Judge Gordon Godfrey in Grays Harbor County Superior Court. I was sentenced to 45 months on all three charges to be served concurrently. My appeal was filed on March 25, 2014 in Grays Harbor County Superior Court and I have been assigned an appellate attorney. I am submitting information to her so she can begin working on an appeal.

During the trial the prosecutor committed misconduct by not providing potentially exculpatory information to the defense in violation of the Brady Rule. Under CrR 7.5(a) Grounds for a new trial, the court may grant a new trial "When it appears that a substantial right of the defendant was materially affected." CrR 7.5(a)(2) applies when there is a case of "Misconduct of the Prosecution" or CrR 7.5(a)(8) where "Substantial justice has not been done." CrR 7.5(b) states that motions for a new trial must be served and filed within 10 days after the verdict, but allows the court to extend that time at its own discretion.

The prosecutor withheld evidence of a previous rape trial, case # 10-1-195-9, that the alleged victim was involved and the prosecutor herself also prosecuted so she was well aware of the information. According to the Brady rule and the Omnibus Order she "Must disclose evidence in plaintiff's possession or that she knew about that is favorable to the defendant on the issue of guilt." The dates of the other trial coincide with dates in this case and could be used to prove my innocence. Also, testimony in the previous case, as well as the statement from the alleged victim's mother call into question whether this crime could have happened.

My assets are a salvage title for a 1993 Mazda Protégé with a value of \$800.00. My liabilities are \$800.00 in court costs and \$300.00 to Sprint. I have no other assets or liabilities.

I would like the Supreme or Appellate Court to overturn or set aside the verdict on all three counts in this case due to the new evidence that I could use to prove that I did not commit the crimes the alleged victim has accused me of. I would like to be able to have the chance to fairly defend myself using all the evidence that I legally should have had access to.

Thank you for your time.

Charles Gotcher



SINCLAIR & STROPHY P.S.
Attorneys at Law

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www.jsinclairlaw.com

John Sinclair (sinclairlaw@gmail.com), Of Counsel
Paul Strophy (p_strophy@hotmail.com), Attorney
Ashlee Strickland (asinclairlaw@gmail.com), Asst.

April 18, 2014

Charles R. Gotcher, DOC # 371646
c/o Washington Corrections Center
PO Box 900
Shelton, WA 98584

RE: State v. Gotcher, GHSC # 13-1-00199-6; Your Appeal & Other Post-Conviction Issues

Dear Charles:

Enclosed you will find conformed copies of the following documents filed in your case in Grays Harbor Superior Court on March 25, 2014:

1. Notice of Appeal to Division II of Court of Appeals;
2. Motion for Order of Indigency;
3. Order of Indigency; and
4. Affidavit of Service.

Because your sentencing hearing was on March 10, 2014, the filing of the notice of appeal on March 25, 2014 complies with the 30-day deadline to file an appeal for your case and your right to appeal has been preserved.

Unfortunately, there were a couple of post-conviction issues that we discussed pursuing prior to the filing of the appeal that I am not able to do under the court rules. As we discussed, you wanted me to file motions for a new trial on two different basis: (1) that there was insufficient evidence to conviction you of count 3 (specifically the alleged incident did not occur within the time set forth in the information); and (2) that the prosecutor committed misconduct by not providing potentially exculpatory information to us (in violation of the *Brady* case).

These motions are allowed under CrR 7.5(a), which establishes grounds for a new trial. In your case, the first issue regarding sufficiency of evidence for Count 3, the applicable

subsection of the rule is CrR 7.5(a)(7), which allows a new trial when it is shown "That the verdict or decision is contrary to law and the evidence." For the second issue, there is a basis under CrR 7.5(a)(2), which applies in cases of "Misconduct of the prosecution . . ." or under CrR 7.5(a)(8), which is a catch-all provision for cases where "substantial justice has not been done." The rule requires that motions for new trial are filed within 10 days of the verdict, but also allows the court to extend that time within its discretion. CrR 7.5(b).

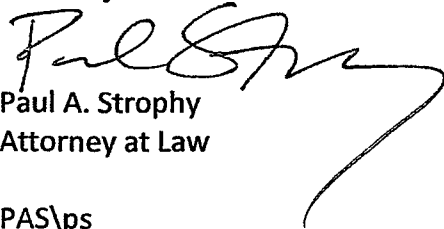
Because the rule allowed the judge to extend the deadline, I was working under the impression that I could still file the motion(s) after the sentencing hearing, if the judge agreed to extend the deadline, so long as I did before the notice of appeal was filed. Especially because the issue of the failure of the prosecutor to provide *Brady* material was not discovered until after the 10-day deadline, I was in hopes the judge would grant the extension. Unfortunately, I failed to notice that under CrR 7.5(e), any motion for a new trial must be resolved before judgment and sentence. If I had realized that, I would have made a motion to continue the sentencing hearing until after a motion to extend the deadline for a motion for a new trial had been heard.

Because it is not possible for me to argue any of these issues to the trial court at this point, your only options are to address the matters in your appeal or through a personal restraint petition to the Court of Appeals. The appeal has already been started and can address the first issue regarding the sufficiency of the evidence for Count 3. The court-appointed appellate attorney should contact you about the appeal process, so be sure to give him/her notice of that issue. If I am contacted, I will share that information with him/her as well. As for the issue regarding the prosecution's failure to provide *Brady* material, that was not a part of the trial record, and must be addressed through a Personal Restrain Petition (PRP). The rules for a PRP are set forth in the Rules of Appellate Procedure (RAP), Title 16. There should be copies of the rules, as well as other legal reference materials in the Department of Corrections facility.

This concludes my representation of you on this matter. Nevertheless, I am happy to speak with your appellate attorney or you to help in any way I can with the appeals. If you have any questions, please call. Thank you.

Sincerely,

Sinclair & Strophy, P.S.
Attorneys at Law



Paul A. Strophy
Attorney at Law

PAS\ps
Enclosure

2010 MAY 19 AM 11:10

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JASON J. GAISER,

Defendant.

No.:

10-1-195-9

**MOTION AND DECLARATION FOR
ORDER FOR WARRANT OF ARREST**

PA No.: CR10-0194

LEA No.: GHSO 10-4574

COMES NOW the State of Washington, plaintiff, and moves the Court for an order directing the issuance of a warrant for arrest of the defendant(s).

THIS MOTION is based upon the following declaration.

H. STEWARD MENEFFEE
Prosecuting Attorney
for Grays Harbor County

BY:

KATHERINE L. SVOBODA
Sr. Deputy Prosecuting Attorney
WSBA #34097

DECLARATION

I, Katherine L. Svoboda, hereby declare and say as follows:

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4 Pursuant to CrR 2.2(a)(3)(i), the DISCIS, DOL and DOC databases have been searched
5 for the defendant's current address and the results of that search have been filed with the Clerk in
6 this cause number.

7 That an Information was filed charging the defendant(s) with a criminal offense and
8 probable cause exists for the issuance of an arrest warrant based upon the following facts which
9 have been furnished in a police report submitted by the Grays Harbor Sheriff's Office:

10 A.J.E. is a minor female, with a date of birth of July 26, 1995. The defendant is an adult
11 male, with a date of birth of July 11, 1990. A.J.E. and the defendant have never been married nor
12 in a registered domestic partnership.

13 The Grays Harbor Sheriff's Office received a call from a mother stating that she believed
14 her 14 year old daughter had sexual contact with the defendant. Arrangements were made for the
15 daughter, A.J.E., to be interviewed at the Children's Advocacy Center on April 1, 2010. A.J.E.
16 stated that shortly before St. Patrick's Day, she was watching her younger siblings while her
17 mother was out doing errands, and the defendant came over to her house. A.J.E. and the
18 defendant went up to an apartment above their garage that she was working on. A.J.E. stated
19 while they were in the apartment one thing led to another and they had sexual intercourse. She
20 stated they were on the floor with their clothes off and she was lying on her back with the
21 defendant on top of her. A.J.E. stated the defendant used a condom, which he brought with him.
22 A.J.E. stated specifically that the defendant placed his "dick" in her vagina. Afterwards, they put
23 their clothes back on and the defendant left.

24 The defendant was contacted by Grays Harbor Sheriff Sergeant Shumate and Detective
25 McGowan on April 2, 2010. The defendant agreed to speak with the officers and went with them
26 to the Oakville Police Department. The officers told the defendant they needed to speak with
27 him about A.J.E. The defendant stated he knew A.J.E. and that he had been over at her house a

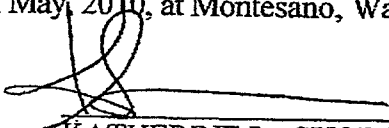
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4 couple of weeks prior to help her clean what she referred to as her apartment. He stated it was
5 more like a room above the garage. The defendant admitted that during this visit he had sex with
6 A.J.E. and that he used a condom, which he had brought with him. Detective McGowan asked
7 the defendant how old A.J.E. was and he stated he believed she was 14 or 15 years old. He
8 admitted that he knew A.J.E. was too young to have sex but he wasn't thinking of that at the
9 time.

10 In light of the nature of the charge the State requests that a warrant issue so that the
11 defendant may be brought immediately before the court for the setting of conditions.

12 That the above acts occurred in Grays Harbor County, Washington That a warrant should
13 issue.

14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct to the best of my knowledge and belief.

16 DATED this 19th day of May, 2010, at Montesano, Washington.

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19 KATHERINE L. SVOBODA
Sr. Deputy Prosecuting Attorney
WSBA #34097

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2011 JAN 18 AM 9:58

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION

TO: The Honorable David L Edwards
Grays Harbor County Superior Court
NAME: GAISER, Jacob J
ALIAS(ES):
CRIME(S): Rape Of A Child 3rd Dg
DATE OF OFFENSE: 3/15/10
PRESENT ADDRESS: Grays Harbor County Jail

DATE OF REPORT: 1/13/11
DOC NUMBER: 345780
COUNTY: Grays Harbor
CAUSE #: 10-1-195-9
SENTENCING DATE: 1/24/2011
DEFENSE ATTORNEY: David Mastachkin

I. OFFICIAL VERSION OF OFFENSE:

This information is taken from the Grays Harbor County Prosecuting Attorney's file, Grays Harbor County Sheriff's Office Police reports, witness statements, and an interview from the Children's Advocacy Center of Grays Harbor.

On 3/27/10, at approximately 1:20 pm, Grays Harbor County Sheriff's Deputies responded to a call from a Mrs. Eaton who reported a sex offense involving her 14 year old daughter, Aisha Eaton, and a man believed to be around 20 years old. Mrs. Eaton stated that her older daughter, Paige, told her that she heard from friend that Aisha may have had sex with 20 year old man. Mrs. Eaton stated that she confronted Aisha about this on 3/25/10, and Aisha admitted that she lost her virginity to Jacob Gaiser. Aisha told her mother that the sex occurred at their home on Cedar Creek Road when she was left home to babysit her seven year old brother and little baby sister a week before. Aisha told her mother that she met Jacob on the internet and he developed a relationship with her.

On 4/1/10, Detective McGowen conducted a forensic interview with Aisha at the Children's Advocacy Center (CAC) in Montesano. Aisha admitted during the interview that she met Jacob Gaiser a couple of days before St. Patrick's Day, which was 3/17/10. Aisha stated that she was home babysitting her younger siblings while her mother was